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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY LAVONS WILLIAMS,

Defendant and Appellant.

B191853

(Los Angeles County
Super. Ct. Nos. TA078067, BA282642,
BA278258)

APPEAL from a judgment of the Superior Court of Los Angeles County, John T. Doyle, Judge. Affirmed.

Gary Lavons Williams, in pro. per.; Donna L. Harris, under appointment by the Court of Appeal, and Cannon & Harris for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Gary Williams was convicted by jury of six counts of robbery and one count of attempted robbery arising out of six incidents at separate locations in Los Angeles in December 2004 and January 2005. Defendant was further found to have used a gun in the commission of the offenses. In a bifurcated bench trial, the court found that in 1991 defendant suffered multiple prior convictions under the “Three Strikes” law and one prior serious felony conviction, all arising from the same superior court case. Defendant was sentenced to six consecutive terms of 25 years to life for robbery and attempted robbery (sentence on one of the robbery counts was imposed concurrently), six consecutive 10-year enhancements for firearm use, and one 5-year enhancement for the prior serious felony conviction.

Defendant appealed, this court appointed counsel, and counsel filed an opening brief in which no issues were raised pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441–442. We then notified defendant that he could personally submit any contentions or issues that he wished us to consider. Defendant has done so in a lengthy brief that contains seven argument headings. The arguments generally attack the sufficiency of the evidence, the constitutionality of applying Three Strikes sentencing to this case, and the performance of defendant’s trial attorney.

With respect to the robbery convictions and findings of gun use, defendant argues that the evidence by which he was identified as the perpetrator and described as using a gun was inadequate and unreliable. He further argues that the gun use findings were unsupported because the gun described by victims was never found. There is no merit in defendant’s contentions.

In reviewing an appellate record on a claim of insufficient evidence, “[t]he proper test . . . is whether, on the entire record, a rational trier of fact could find appellant guilty beyond a reasonable doubt. [Citations.] In making this determination, the appellate court “must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citations.] . . .’ [¶] Although the appellate court must ensure the evidence is reasonable in nature, credible, and of solid value [citation], it must be ever cognizant

that “‘it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends’” [Citations.] Thus, if the verdict is supported by substantial evidence, this court must accord due deference to the trier of fact and not substitute its evaluation of a witness’s credibility for that of the fact-finder. [Citations.]” (*People v. Barnes* (1986) 42 Cal.3d 284, 303–304.)

“‘It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is the sole judge of the credibility of the witnesses. It is well settled in California that one witness, if believed by the jury, is sufficient to sustain a verdict. To warrant the rejection by a reviewing court of statements given by a witness who has been believed by the trial court or the jury, there must exist either a physical impossibility that they are true, or it must be such as to shock the moral sense of the court; it must be inherently improbable and such inherent improbability must plainly appear.’ [Citations.]” (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258–1259.)

The witnesses in this case identified defendant (security camera images were also put in evidence when available) and described the gun he displayed. There was nothing impossible or improbable about this evidence. Accordingly, defendant’s argument must be rejected.

Defendant further asserts that increasing his sentence by virtue of his 1991 convictions violated his fundamental rights. We disagree. The Three Strikes law under which defendant was sentenced has withstood various constitutional challenges. (See, e.g., *People v. Gray* (1998) 66 Cal.App.4th 973, 992–995.) Defendant offers no arguments here that would bring application of the law into question. And because defendant was sentenced as a Three Strikes offender rather than under California’s Determinate Sentencing Law, he is incorrect that the recent United States Supreme Court opinion in *Cunningham v. California* (2007) ___U.S. ___ [127 S.Ct. 856] can be applied to his case.

Defendant asserts that his trial counsel rendered ineffective assistance, especially with respect to preparing the testimony of a defense expert who addressed factors that can undermine the reliability of eyewitness identification and also based on trial counsel's failure to challenge aspects of his prior convictions. Again, we disagree.

The Supreme Court has “summarized defendant’s burden [on such claims] as follows: “In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel’s performance was ‘deficient’ because his ‘representation fell below an objective standard of reasonableness . . . under prevailing professional norms.’ [Citations.] Second, he must also show prejudice flowing from counsel’s performance or lack thereof. [Citation.] Prejudice is shown when there is a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” [Citation.] [¶] Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a ‘strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.’ [Citation.]” (*People v. Lucas* (1995) 12 Cal.4th 415, 436–437.) The futility of an objection or motion that counsel is accused of neglecting provides a valid explanation for counsel’s conduct. (*People v. Price* (1991) 1 Cal.4th 324, 386–387; *People v. Diaz* (1992) 3 Cal.4th 495, 563.)

Utilizing the applicable standards, nothing about which defendant complains provides a basis for relief on the record before us on the ground of ineffective trial counsel.

We have examined the entire record and are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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MALLANO, J.

We concur:

SPENCER, P. J.

VOGEL, J.